



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

SEP - 3 2008

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

DOCKETED BY

mm

IN THE MATTER OF THE APPLICATION OF
ADELPHIA TELECOMMUNICATIONS, INC.
FOR CANCELLATION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR RESOLD
LONG DISTANCE TELECOMMUNICATION
SERVICES.

DOCKET NO. T-03828A-05-0353

IN THE MATTER OF THE APPLICATION OF
ADELPHIA TELECOMMUNICATIONS, INC.
FOR APPROVAL OF THE SALE OF ASSETS TO
TELECOM MANAGEMENT, INC. D/B/A
PIONEER TELEPHONE.

DOCKET NO. T-03828A-05-0721

DOCKET NO. T-04277A-05-0721

DECISION NO. 70487

ORDER

Open Meeting
August 26 and 27, 2008
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

PROCEDURAL HISTORY

On August 24, 2000, the Arizona Corporation Commission ("Commission") granted a Certificate of Convenience and Necessity ("CC&N") to Adelphia Telecommunications, Inc. ("Adelphia") for provision of resold long distance telecommunications services in Arizona pursuant to Decision No. 62847.

On February 15, 2005, the Commission granted a CC&N to Telecom Management, Inc. d/b/a Pioneer Telephone for provision of resold long distance telecommunications services in Arizona pursuant to Decision No. 67594.

...

...

1 On May 17, 2005, Adelphia filed with the Commission its Application for Cancellation of its
2 Certificate of Convenience and Necessity for Resold Long Distance Telecommunication Services
3 ("Cancellation Application") under Docket No. T-03828A-05-0353.

4 On June 10, 2005, the Commission's Utilities Division Staff ("Staff") filed its Letter of
5 Insufficiency and First Set of Data Requests to Adelphia.

6 On June 20, 2005, Adelphia filed its Responses to Staff's First Set of Data Requests. Adelphia
7 stated that it had received a potential offer to purchase its long distance services and customer base.
8 As such, Adelphia requested that the Commission stay its Cancellation Application pending the
9 possible sale.

10 On October 12, 2005, Adelphia filed an Application for Approval of the Sale of Assets to
11 TMI ("Sale Application") under Docket Nos. T-03828A-05-0721 and T-04277A-05-0721.

12 On April 4, 2006, Staff filed correspondence to Adelphia asking for information regarding the
13 Cancellation Application.

14 On April 25, 2006, Adelphia filed a copy of a letter dated March 3, 2006, which stated that
15 the sale of Adelphia to TMI had occurred and Adelphia requested confirmation that cancellation of its
16 CC&N had been approved.

17 On May 16, 2006, a Procedural Order was issued directing the Commission's Utilities
18 Division Staff ("Staff") to respond to Adelphia's April 25, 2006, correspondence.

19 On June 1, 2006, Staff filed a Memorandum noting that Adelphia's Cancellation Application
20 was insufficient, and, as such, the Docket remained open. Staff also recommended that Docket No. T-
21 03828A-05-0353 (the Cancellation Application) be consolidated with Docket Nos. T-03828A-05-
22 0721 and T-04277A-05-0721 (the Sale Application).

23 Pursuant to a Procedural Order dated June 6, 2006, Docket Nos. T-03828A-05-0353, T-
24 03828A-05-0721 and T-04277A-05-0721 were consolidated.

25 On June 7, 2006, Staff filed its Letter of Insufficiency and Second Set of Data Requests to
26 Adelphia.

27 On July 3, 2006, Adelphia filed its Responses to Staff's Second Set of Data Requests.
28

1 On July 20, 2006, Adelphia filed correspondence relating that, as a result of a bankruptcy sale,
2 Adelphia would cease doing business on July 31, 2006, and further requests for information should
3 be directed to TMI.

4 On November 22, 2006, Staff filed its Letter of Insufficiency and Third Set of Data Requests
5 to Adelphia and to TMI.

6 On September 25, 2007, a Procedural Order was issued directing Staff to file an update in this
7 consolidated docket.

8 On November 2, 2007, Staff filed its update in this matter, recommending approval of the
9 Cancellation Application and administrative closure of the Sale Application.

10 By Procedural Order dated April 1, 2008, Staff was requested to file a Staff Report supporting
11 the recommendations Staff made in the update.

12 On May 16, 2008, Staff filed its Staff Report recommending approval of the Cancellation
13 Application and the Sale Application.

14 DISCUSSION

15 On August 24, 2000, in Decision No. 62847, the Commission granted Adelphia authority to
16 provide competitive resold long distance telecommunications services in Arizona. In that Decision,
17 Adelphia was not authorized to charge customers prepayments, advances or deposits for its services.

18 Adelphia applied to cancel its CC&N on May 17, 2005. In response to Staff's data requests,
19 Adelphia noted that it was entertaining a possible purchase offer for its long distance services and
20 customer base. Adelphia requested a stay of its Cancellation Application while negotiations were
21 ongoing. Staff related to Adelphia that if it moved forward with the sale, Adelphia and the potential
22 purchaser would need to comply with Commission regulations and Arizona laws regarding the sale.

23 Adelphia and its potential purchaser, Telecom Management, Inc., d/b/a Pioneer Telephone
24 ("TMI" and together with Adelphia, the "Companies") filed the Sale Application on October 12,
25 2005, under Docket Nos. T-03828A-05-0721 and T-04277A-05-0721. Under the terms of a purchase
26 agreement, TMI would purchase the ownership, right, title and interest in Adelphia's assets, including
27 its customer accounts, for the purchase price of \$80,000 plus Billed Revenues as that term is defined
28

1 in the purchase agreement. The purchase funds would be paid to the bankruptcy estate and approved
2 by the U.S. Bankruptcy Court for the Southern District of New York in Case No. 02-41729 (REG).

3 TMI is a Maine corporation authorized to provide resold long distance telecommunications
4 services in Arizona pursuant to Decision No. 67594 (February 15, 2005). TMI is not authorized to
5 charge customers prepayments, advances or deposits for its services.

6 In the Sale Application, the Companies stated, "[i]t is our understanding, based upon review
7 of the applicable statutes and regulations, that this transaction does not require prior Commission
8 approval." (*Sale Application*, page 1.) However, as noted in the Staff Report, pursuant to Arizona
9 Revised Statutes ("A.R.S.") § 40-285(A), the sale of Adelphia's assets to TMI does require approval
10 by the Commission. Adelphia is also required to comply with the terms of Arizona Administrative
11 Code ("A.A.C.") R14-2-1107 regarding notice of the requested cancellation to its customers.

12 Staff noted that Adelphia has met the requirements of A.A.C. R14-2-1901 – 1913 and A.A.C.
13 R14-2-2001 – 2007 ("Slamming and Cramming Rules"). Further, Adelphia has met the requirements
14 of the Federal Communications Commission ("FCC") regarding streamlined approval of the transfer
15 of the customer base. A copy of Adelphia's FCC Streamlined Pleading Cycle Released December 20,
16 2005, was filed with the Commission on July 3, 2006.

17 Staff also notes that because neither TMI nor Adelphia is a Class 'A' Utility, the Public
18 Utility Holding Companies and Affiliated Interests rules, A.A.C. R14-2-801 to R14-2-806, do not
19 apply.

20 In the Staff Report, Staff stated that the last Adelphia customer was transferred to TMI on
21 February 9, 2006, the closing date of the sale transaction. Ultimately, the only asset TMI acquired
22 from Adelphia was its customer base.

23 FINDING OF FACTS

24 1. Adelphia is authorized by the Commission to provide resold long distance services in
25 Arizona pursuant to Decision No. 62847 (August 24, 2000).

26 2. TMI is authorized by the Commission to provide resold long distance services in
27 Arizona pursuant to Decision No. 67594 (February 15, 2005).

28 3. Adelphia filed its Cancellation Application on May 17, 2005, with the Commission,

1 seeking to cancel its CC&N. At that time, Adelphia had approximately 229 customers in Arizona.

2 4. On May 27, 2005, Adelphia published notice of the Cancellation Application in the
3 *Arizona Republic*. There have been no objections, responses or requests for hearing.

4 5. On October 12, 2005, Adelphia filed the Sale Application with the Commission,
5 seeking to transfer its assets and customer base to TMI.

6 6. On October 19, 2005, Adelphia sent a notice to its customers describing the sale and
7 assuring customers that they would continue to receive the same telecommunications services they
8 were currently receiving in accordance with the rates, terms and conditions of their existing contracts
9 or under the effective tariffs. The notice also advised the customers of their right to change providers.
10 Adelphia did not collect any prepayments, advances or deposits from its customers. As such, Staff
11 asserts Adelphia has complied with the terms of A.A.C. R14-2-1107.

12 7. After the sale, TMI planned to provide the same services to Adelphia's customers as
13 was provided prior to the completion of the sale. The Companies asserted that Adelphia's customers
14 would not experience any change in their rates or services. Further, TMI stated that it would revise its
15 tariff to incorporate the terms and conditions of service included in Adelphia's tariffs.

16 8. Staff verified that TMI filed revisions to its Tariff AZ Corp. Com. No. 1 in Docket No.
17 T-04277A-06-0778 on December 11, 2006, to add a rate plan to include customers acquired from
18 Adelphia in this matter. Staff notes that Docket No. T-04277A-06-0778 remains open pending
19 approval of the sale of Adelphia's assets to TMI.

20 9. Staff asserts that Adelphia has met the requirements of the Slamming and Cramming
21 Rules.

22 10. The Companies state that granting the Applications would serve the public interest
23 because the transaction will be transparent to, and have no adverse impact on, the Companies'
24 customers. Customers are subject to the same rates, terms and conditions as they were prior to any
25 asset transfer.

26 11. According to the Corporations Division of the Commission, the Companies are in
27 good standing. Consumer Services reports zero complaints, inquiries or opinions filed against
28 Adelphia or TMI from January 1, 2005 through April 11, 2008. The Companies are current with their

1 compliance requirements under their respective CC&Ns.

2 12. Staff recommends approval of the sale of Adelphia's customer base to TMI.

3 13. Staff recommends cancellation of Adelphia's CC&N to provide telecommunications
4 services in Arizona.

5 14. Staff further recommends that Adelphia's tariff be cancelled.

6 15. We find that Staff's recommendations are reasonable and shall be adopted.

7 **CONCLUSIONS OF LAW**

8 1. The Companies are public service corporations within the meaning of Article XV of
9 the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

10 2. The Commission has jurisdiction over the Companies and the subject matter of the
11 Applications.

12 3. Notice of the Applications was given in accordance with Arizona law.

13 4. The sale of Adelphia's assets, including customers, to TMI is in the public interest.

14 5. Cancellation of Adelphia's CC&N is in the public interest.

15 6. Staff's recommendations are reasonable and should be adopted.

16 **ORDER**

17 IT IS THEREFORE ORDERED that the application of Adelphia Telecommunications, Inc.,
18 for approval of the sale of its customer base to Telecom Management, Inc. d/b/a Pioneer Telephone is
19 hereby approved.

20 IT IS FURTHER ORDERED that the application of Adelphia Telecommunications, Inc., for
21 cancellation of its Certificate of Convenience and Necessity for resold long distance
22 telecommunications services is hereby approved.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that Adelphia's Arizona Tariff No. 1 is cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 3rd day of Sept., 2008.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

ADELPHIA TELECOMMUNICATIONS, INC.

2
3 DOCKET NOS.:

T-3828A-05-0353, T-03828A-05-0721 and T-04277A-05-0721

4
5 Edward Gothard, Esq.
NOWALSKY, BRONSTON & GOTHARD
3500 North Causeway Boulevard, Suite 1442
6 Metairie, Louisiana 70002

7 Janice Alward, Chief Counsel
Legal Division
8 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
9 Phoenix, Arizona 85007

10 Ernest G. Johnson, Director
Utilities Division
11 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
12 Phoenix, Arizona 85007